CCRB INVESTIGATIVE RECOMMENDATION

| Investigator: | | Team: | CCRB Case #: | Force | ☐ Discourt. | U.S. | |
|-------------------------------|--|-----------------------|------------------|------------|-------------------|------------|--|
| Maura Roche | | Squad #4 | 201700839 | ✓ Abuse | O.L. | ☐ Injury | |
| Incident Date(s) | | Location of Incident: | | Precinct: | 18 Mo. SOL | EO SOL | |
| Tuesday, 01/31/2017 9:30 PM | | Southbound Beach 94t | h Street and | 100 | 7/31/2018 | 7/31/2018 | |
| 1 desday, 01/31/2017 7.30 1 W | | Rockaway Freeway | ii Street and | 100 | 7/31/2010 | 7/31/2010 | |
| Date/Time CV Reported | | CV Reported At: | How CV Reported: | : Date/Tim | e Received at CCI | RB | |
| Wed, 02/01/2017 4:02 PM | | CCRB | Phone | Wed, 02/0 | 01/2017 4:02 PM | | |
| Complainant/Victim | Type | Home Addre | ess | | | | |
| | | | | | | | |
| | | | | | | | |
| Subject Officer(s) | Shield | TaxID | Command | | | | |
| 1. POM Timothy Terrillion | 16714 | 952286 | 100 PCT | | | | |
| 2. POM Patrick Reilly | 16493 | 957993 | 100 PCT | | | | |
| 3. SGT Anthony Guadagno | 482 | 937872 | 100 PCT | | | | |
| Officer(s) | Allegatio | on | | Inv | estigator Recon | nmendation | |
| A.POM Timothy Terrillion | Abuse: Police Officer Timothy Terrillion threatened to arrest | | | | | | |
| D DOM Time of the Transition | § 87(2)(b) | oli a Office Timeda T | S | 2) | | | |
| B.POM Timothy Terrillion | Abuse: Police Officer Timothy Terrillion frisked (5) | | | | | | |
| C.POM Timothy Terrillion | Abuse: Police Officer Timothy Terrillion searched (8) 87(2) | | | | | | |
| D.POM Patrick Reilly | Abuse: Police Officer Patrick Reilly interfered with suse of a recording device. | | | | | | |
| E.POM Patrick Reilly | Abuse: Police Officer Patrick Reilly searched the vehicle in which \$87(2)(b) was an occupant. | | | | | | |
| § 87(4-b) § 87(2)(g) | | | | | | | |
| § 87(4-b) § 87(2)(g) | | | | | | | |

Case Summary

On February 1, 2017, \$87(2)(b) filed this complaint with the CCRB by phone.

On January 31, 2017, at approximately 9:30 p.m., \$87(2)(b) was driving southbound on Beach 94 Street at Rockaway Freeway in Queens with his \$87(2)(b) -year-old daughter, \$87(2)(b) when he was pulled over by three officers, identified by the investigation at PO Timothy Terrillion, PO Patrick Reilly, and Sgt. Anthony Guadagno of the 100 Precinct, for a broken license plate light.

After running \$87(2)(b) s license and registration information, PO Terrillion asked \$17(2)(b) refused to get out of the car and asked PO Terrillion why he was being asked to do so. \$87(2)(b) then instructed \$87(2)(b) to start filming the incident with her cell phone, which she did. PO Terrillion told \$87(2)(b) that if he did not get out of the car, he could arrest \$87(2)(b) (Allegation A).

PO Terrillion then allegedly opened \$87(2)(b) s car door and pulled \$87(2)(b) out of the car. PO Terrillion patted \$87(2)(b) down (**Allegation B**) and allegedly searched inside \$37(2)(c) s jacket pockets, pants pockets, waistband, genital area, and socks (**Allegation C**).

Meanwhile, PO Reilly asked \$87(2)(b) to get out of the front passenger seat of the car. As \$87(2)(b) was getting out of the car, PO Reilly allegedly pushed the cell phone that she was using to record the incident out of her hand, so that it fell onto the car floor and stopped recording (**Allegation D**). The phone sustained no damage.

PO Reilly then searched \$87(2)(b) s car (Allegation E).

§ 87(4-b) § 87(2)(g)

PO Terrillion issued \$87(2)(b) a summons for a \$87(2)(b) (BR 01). No other summonses were issued and no arrests resulted from this incident.

provided a total of seven video clips taken via cell phone by \$87(2)(5) only two of which are relevant to the allegations and are provided below (BR 02 and BR 26). The original clips (BR 28 and BR 29) can be found in IAs 21 and 25. Their transcriptions (BR 30 and BR 31) can be found in IAs 35 and 38.



201700839 20170330 0912 DM.mp4



201700839 20170330 0913 DM.mp4

Mediation, Civil and Criminal Histories

- declined to mediate this case.
- As of March 13, 2017, no Notice of Claim has been filed regarding this incident (BR 04).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Page 2

| Civilian and Officer CCRB Histories This is the first CCRB complaint for \$87(2)(b) (BR 07). This is the first CCRB complaint for \$87(2)(b) (BR 08). PO Terrillion has been a member of the NYPD for five years. There are nine prior allegations against him stemming from three complaints, none of which was substantiated. \$87(2)(9) | |
|---|-----|
| | |
| PO Reilly has been a member of the NYPD for two years. There are two prior allegatio against him stemming from one complaint, neither of which was substantiated. PO Reilly's CCRB history is not indicative of a pattern applicable to this case. Sgt. Guadagno has been a member of the NYPD for 11 years. There are two prior allegations against him stemming from one complaint, none of which was substantiated. | |
| Findings and Recommendations Allegations not pleaded Stop - \$87(2)(b) | |
| • § 87(2)(g) | |
| Potential Issues • § 87(2)(b) did not allege a frisk in any of the statements that he provided to the CCRB only a search. PO Terrillion acknowledged that he did frisk § 87(2)(b) § 87(2)(g) | _ |
| Allegation A – Abuse of Authority: Police Officer Timothy Terrillion threatened to arrest 887(2)(b) It is undisputed that PO Terrillion, PO Reilly, and Sgt. Guadagno stopped 887(2)(b) vehicle. 887(2)(g) | |
| On January 31, 2017, at 9:30 p.m., [887(2)(6)] (BR 09) was driving with his daughter, who sat in the front passenger seat. They were going southbound on Beach 94 Street to get pizza, when he saw a black four door Impala signaling him to pull over, which he dimmediately at the intersection of Beach 94 Street and Rockaway Expressway. PO Terrillion, Post of the control of the properties of | did |

Page 3

PO Terrillion, PO Reilly, and Sgt. Guadagno then went back to their car to run \$27200 s information. After about three minutes, PO Terrillion, PO Reilly, and Sgt. Guadagno again approached \$27200 s car. PO Terrillion went to the front driver's side door, PO Reilly went to the front passenger's side door, and Sgt. Guadagno stood next to PO Terrillion. PO Terrillion told \$27200 that he had a broken tail light and then asked \$27200 to get out of the car.

\$27200 told PO Terrillion that he did not want to get out of the car and asked why he needed to do so if the only violation was a broken taillight. \$27200 also asked to speak with PO Terrillion's supervisor. Sgt. Guadagno answered that he was PO Terrillion's supervisor and told \$27200 that they had every right to ask \$27200 to get out of the car.

Reilly, and Sgt. Guadagno all approached his car, and PO Terrillion asked 87(2)(5) for his

After asking \$87(2)(b) to get out of the car about six times, PO Terrillion asked \$87(2)(b) if he remembered him. \$87(2)(b) told PO Terrillion that he did remember him from when PO Terrillion arrested him in \$87(2)(b) (A BADS search confirmed that PO Terrillion arrested \$87(2)(b) on \$87(2)(b) (BR 27)). PO

Terrillion then threatened to arrest \$87(2)(b) if he did not get out of the car and for the \$87(2)(b) because he was \$87(2)(b) s former arresting officer and because it was in his jurisdiction to do so. Although he refused to get out of the car, \$87(2)(b) said that his voice remained calm and that he kept his hands on the steering wheel at all times.

continued to refuse to get out of the car, and asked \$87(2)(b) to start filming the incident

(BR10) confirmed \$87(2)(b) s account of events with the following addition noted. She started recording the incident just before PO Terrillion allegedly threatened to arrest \$87(2)(b) by placing the phone face-down on her thigh.

A video clip (see above-referenced file labeled 201700839_20170330_0912_DM.mp4; BR 026) provided by strong via email on February 2, 2017, captures the moment that strong alleges that PO Terrillion threatened to arrest him.

The video is shot from an upward angle directed towards the front driver's seat. The camera seems to be located on or near the front passenger's seat. The front car windshield is visible in the upper left side of the frame. The video portion of the clip remains the same throughout filming.

At 00:00 seconds, PO Terrillion says, "I could arrest you. I could issue a summons, whichever one you want. [ST(2)(b)] then says, "The summons is actually better but as far as arresting me, I haven't done anything wrong." PO Terrillion replies, "Well, actually, a summons is in lieu of arrest, so I don't even have to issue you a summons, I could arrest you for the brake lights." [ST(2)(b)] then says, "I don't understand why you're gonna arrest me for the brake light

Page 4

CCRB Case # 201700839

with her cell phone.

if I never even heard of that." PO Terrillion replies, "Because I'm being a gentleman to you right now, but you're the one that's making it difficult."

PO Terrillion (BR 11) was driving a black Ford Taurus northbound on Beach 94 Street with PO Reilly in the front passenger seat and Sgt. Guadagno in the back, when he saw same scar in front of him with a broken license plate. PO Terrillion signaled the car to pull over, and savenum complied without incident and stopped at the intersection of Beach 94 Street and Rockaway Expressway.

PO Terrillion, PO Reilly, and Sgt. Guadagno all exited their car. PO Terrillion went to the front driver's side door, PO Reilly went to the front passenger's side door, and PO Terrillion could not recall where Sgt. Guadagno went.

PO Terrillion asked \$87(2)(b) for his license and registration, and noted that \$87(2)(b)

was acting irate by refusing to hand over his license and registration and speaking very loudly (when later asked how long it took \$87(2)(b) to give PO Terrillion his license and registration after it was requested, PO Terrillion stated that \$87(2)(b) did it right away). PO Terrillion added that \$87(2)(b) s hands were shaking but that he was able to see \$87(2)(b) s hands at all times and that \$87(2)(b) was not moving in any other way.

Having obtained \$87(2)(b) s license and registration, PO Terrillion, PO Reilly, and Sgt. Guadagno all went back to their car, where, upon closer inspection of \$87(2)(b) s license, PO Terrillion realized that he had arrested \$87(2)(b) previously for \$87(2)(b) PO Terrillion also remembered that \$87(2)(b) was associated with the Hammel's gang, which is a gang associated

PO Terrillion then ran \$37(2)(b) s information through the computer system and found that there was an active order of protection in \$37(2)(b) s name that had been filed by a woman. PO Terrillion could not remember the woman's name, but conjectured that she was an exgirlfriend of \$37(2)(b) s. PO Terrillion could not recall any of the specific information that he obtained from the terminal regarding the order of protection. PO Terrillion apprised PO Reilly and Sgt. Guadagno of all of these facts while they were sitting in their car. At the time, none of the officers knew \$37(2)(b) so they could not be sure if she was the woman who had filed the order of protection against \$37(2)(b)

PO Terrillion, PO Reilly, and Sgt. Guadagno all exited their car for a second time. PO Terrillion went to the front driver's side door to talk to Sgt. Guadagno stood behind PO Terrillion at the back driver's side door, and PO Reilly went to the front passenger's side door. PO Terrillion at this time noticed the smell of alcohol on Sg(2)(b) s breath and saw an orange prescription pill bottle standing upright in the center console, but could not see the contents of the bottle. PO Terrillion had not noticed the smell of alcohol during his first interaction with Sg(2)(b)

PO Terrillion then asked \$87(2)(b) to get out of the car, but \$87(2)(b) refused to get out of the car and did not move in any way. PO Terrillion asked \$87(2)(b) about two to three times Page 5

CCRB Case # 201700839

with a housing project in the area.

to get out of the car. \$87(2)(b) refused for about five minutes, at which point \$87(2)(b) opened his own door and exited the car without any assistance. Once \$87(2)(b) was out of the car, PO Terrillion told \$87(2)(b) that he recognized him in an effort to engage \$87(2)(b) in a conversation so that he could establish \$87(2)(b) so level of sobriety based on his memory of past events, coherence, and any slurring of speech.

During this conversation, PO Terrillion explained to \$87(2)(5) that he could arrest \$17(2)(5) instead of issuing him a summons because that distinction is at the discretion of the officer, but PO Terrillion did not arrest \$87(2)(5) nor did he intend to do so at that time. \$87(2)(5) was speaking loudly but was otherwise behaving normally.

PO Reilly's statement (BR 12) was consistent with PO Terrillion's. However, PO Reilly was not able to hear PO Terrillion's conversation with \$87(2)(b) and at no point heard PO Terrillion speak with \$87(2)(b) regarding an arrest versus a summons.

Sgt. Guadagno's (BR 13) statement was generally consistent with PO Terrillion's with the following exceptions. When PO Terrillion, PO Reilly, and Sgt. Guadagno first approached s car, Sgt. Guadagno observed moving around a lot by swiping his right thigh with his right hand and moving slightly up and down in the driver's seat. From where he was standing, behind PO Terrillion by the back driver's side door, Sgt. Guadagno could not see s hands.

While Sgt. Guadagno was back in their car with PO Terrillion and PO Reilly, PO Terrillion told Sgt. Guadagno and PO Reilly that he had smelled alcohol on stream is breath when he initially asked for his license and registration. PO Reilly then told Sgt. Guadagno that he saw a prescription pill bottle in the center console. PO Terrillion affirmed that he also saw an orange prescription bottle. Neither PO Terrillion nor PO Reilly were able to determine whether or not there were pills in the bottle because it was standing upright in the center console and partially obscured from view.

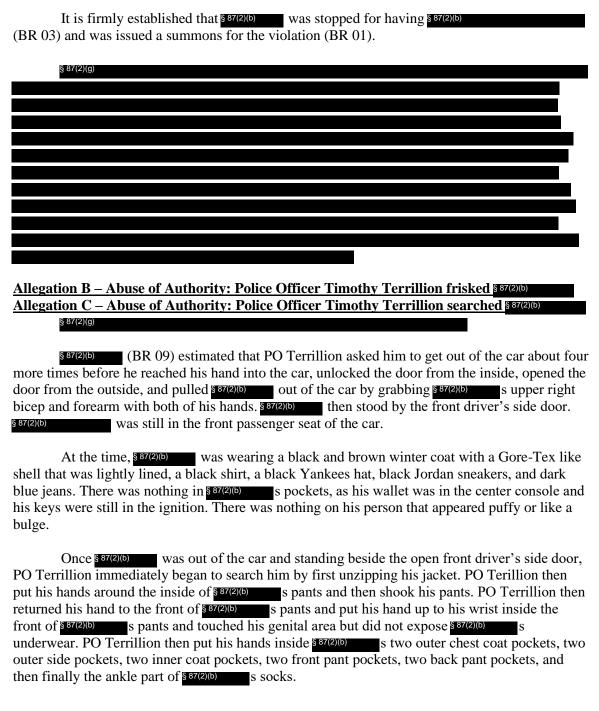
PO Terrillion explained to \$87(2)(b) that a summons is issued in lieu of an arrest while was sitting inside the car. PO Terrillion told \$87(2)(b) that he was asking him to get out of the car because he smelled alcohol on his breath and the officers needed to assess his ability to drive.

Section 375.2 of the New York Vehicle and Traffic Law (BR 32) states that a vehicle must have, "if required to display a number plate on the rear, a white light which shall illuminate the numerals on such plate in such manner as to render such numerals legible for at least fifty feet from the rear."

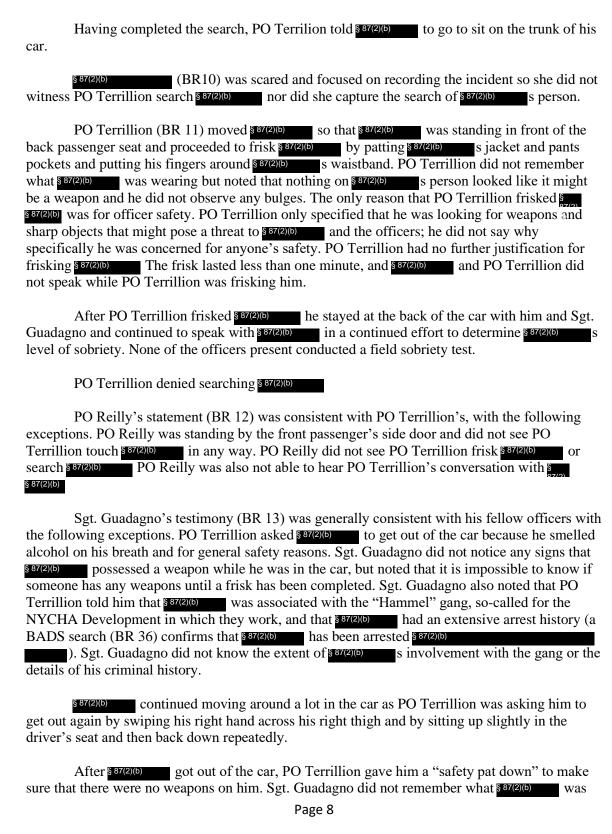
N.Y.S. Criminal Procedure Law, Section 140.10 (BR 33) states that an officer may arrest a person for "any offense when he or she has reasonable cause to believe that such person has committed such offense in his or her presence."

Page 6

Evans v. Solomon, 681 F. Supp.2d 233 (2010) (BR 34), established that when an officer has probable cause to believe that a traffic violation has occurred in the officer's presence, the officer can use his discretion to arrest the motorist, or issue a summons in lieu of arrest.

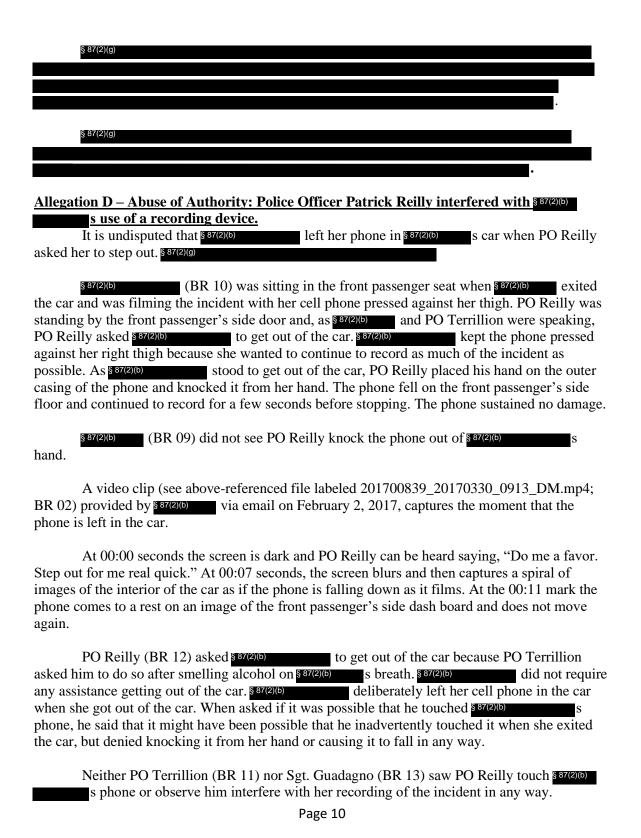


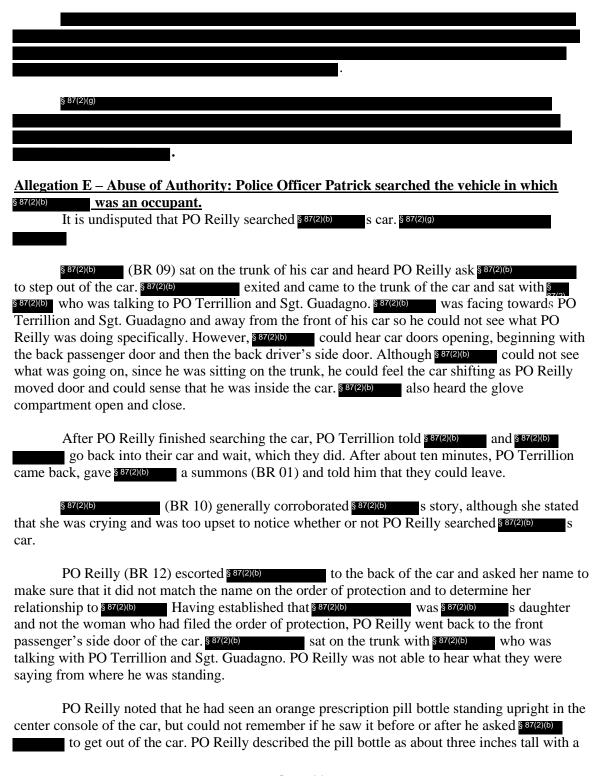
Page 7



wearing but did not see any bulges on \$87(2)(b) s person nor did he have any reason to suspect that §87(2)(b) had any weapons on his person. Sgt. Guadagno added that §87(2)(b) was patted down because of his previous movements in the car, \$87(2)(b) s criminal history, \$87(2)(b) gang associations, the smell of alcohol on his breath, and the active order of protection. According to People v. De Bour, 40 N.Y.2d 210; 201 (1976) (BR 14), an officer may frisk an individual when he reasonably believes that he is in danger of physical injury by virtue of the detainee being armed. An officer must have probable cause to search an individual. People v. Boulware, 130 A.D.2d 370 (1987) (BR 35), states that a knowledge of a person's past records can be considered relevant in determining whether an officer's conduct during an encounter is reasonable, so long as there is also present indication of criminality based upon observable conduct. People v. Henry, 181 Misc. 2d 689 (1999) (BR 15), states that in traffic violation arrests, the search incident to lawful arrest exception cannot be used to justify a frisk where there is an alternative to custodial arrest, such as a summons. As previously established, \$87(2)(b) was initially stopped for a \$87(2)(b) light, which is a non-violent offense. The single reason for frisking \$87(2)(b) that PO Terrillion could articulate was that he was doing it for generic safety purposes; he articulated no suspicions that \$87(2)(b) was armed. Sgt. Guadagno added that PO Terrillion also frisked \$87(2)(b) because of his movements in the car, his criminal history, gang association, the smell of alcohol on his breath, and the active order of protection. However, Sgt. Guadagno did not instruct PO Terrillion to frisk § 87(2)(b) § 87(2)(g)

Page 9





Page 11

white cap, but could not determine what, if anything was inside because the bottom of the pill bottle was obscured from his view.

PO Reilly began to search the "lunge-able grab-able areas" of the car for intoxicants because he had seen the prescription pill bottle and because PO Terrillion had reported smelling alcohol on [887(2)(5)] areas is breath. PO Reilly stated that searching for intoxicants was the only reason that he searched the car.

PO Reilly looked inside the center console area and the front passenger seat and looked in the back seat area with his flashlight but did not physically go into the back seat or open the trunk, nor did he recall opening the glove compartment. PO Reilly picked up the prescription pill bottle and saw that it was filled with coins and did not contain pills or narcotics of any kind.

PO Reilly then went to the back of the car where \$\frac{\\$87(2)(b)}{2}\$ and \$\frac{\\$87(2)(b)}{2}\$ were talking to PO Terrillion and Sgt. Guadagno. PO Terrillion and PO Reilly told \$\frac{\\$87(2)(b)}{2}\$ and that they could go back to their car and, after PO Terrillion issued \$\frac{\\$87(2)(b)}{2}\$ arms (BR 01) for the broken license plate light, \$\frac{\\$87(2)(b)}{2}\$ and \$\frac{\\$87(2)(b)}{2}\$ left the scene without further incident.

Sgt. Guadagno specified that he did not instruct PO Reilly to search the car and that the reason for the search for intoxicants was because of the alcohol that PO Terrillion had smelled on stream is breath. Sgt. Guadagno did not smell any alcohol on sheath until he was speaking with stream by the trunk of the car; he had not smelled any alcohol inside the car. Sgt. Guadagno did not see what areas PO Reilly searched. Sgt. Guadagno did not see the prescription pill bottle himself but recalled that both PO Terrillion and PO Reilly told him when they returned to the car to run stream information that they had seen a bottle, though they had been unable to see the bottle's contents.

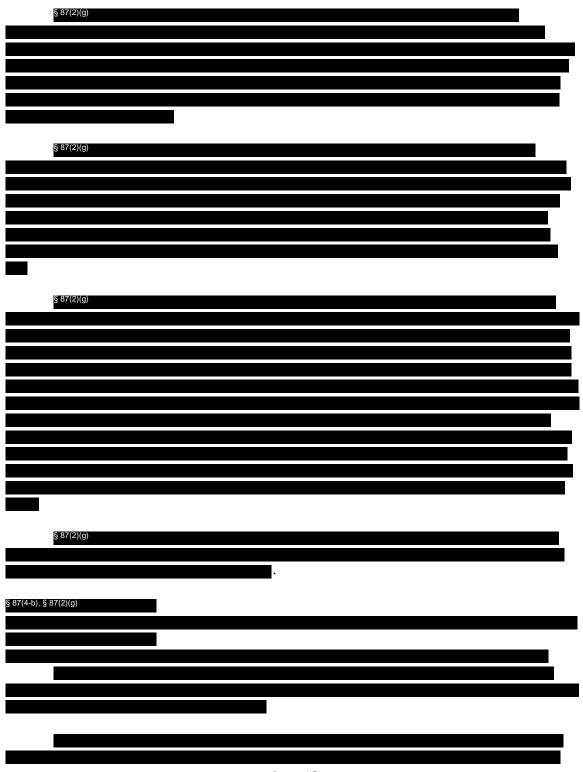
PO Terrillion added that PO Reilly was searching the car for weapons in addition to other intoxicants, although PO Terrillion was not able to give a specific reason as to why there might have been any weapons in the car. PO Terrillion did not see what areas PO Reilly searched inside the car.

In <u>People v. Martin</u>, 50 A.D.3d 1169 (2008) (BR 25), the court held that an officer's detection of the odor of alcohol emanating from a car and the observation of a cup of alcohol in plain view provided probable cause for a vehicle search.

<u>People v. Smith</u>, 949 N.Y.S.2d 474 (2012) (BR 20), states that an officer can search a vehicle without a warrant if he has probable cause to believe that contraband, evidence of a crime, a weapon, or some means of escape lies therein.

According to <u>People v. Derrell</u>, 889 N.Y.S.2d 905 (2009) (BR 21), an officer may not search the area where an individual might gain possession of a weapon if the individual in question is in no position to obtain objects in that area of the car at the time of the search.

Page 12



Page 13

| § 87(4-b) § 8 | 7(2)(g) | | | |
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| Squad: 4 | | | | |
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| | Title/Signature | Print | Date | |
| Reviewer: | | | | |
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